

Total Maximum Daily Load (TMDL) Program



Note: This information is provided for reference purposes only. Although the information provided here was accurate and current when first created, it is now outdated.

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[Notices]

[Page 42121]

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ENVIRONMENTAL PROTECTION AGENCY

[FRL-5868-8]

National Advisory Council for Environmental Policy and Technology--Total Maximum Daily Load Committee: Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: Under the Federal Advisory Committee Act, PL 92-463, EPA gives notice of a three day meeting of the National Advisory Council for Environmental Policy and Technology's (NACEPT) Total Maximum Daily Load (TMDL) Committee. NACEPT provides advice and recommendations to the Administrator of EPA on a broad range of environmental policy issues. The TMDL Committee has been charged to provide recommendations for actions which will lead to a substantially more effective TMDL program. This meeting is being held to enable the Committee and EPA to hear the views and obtain the advice of a widely diverse group of stakeholders in the National Water Program.

In conjunction with the three day meeting, the FACA Committee members and the EPA will host two meetings designed to afford the general public greater opportunity to express its views on TMDL and water related issues.

DATES: The three day public meeting will be held on September 3-5, 1997, in Portland, Oregon, at the Fifth Avenue Suites, 506 S.W. Washington at Fifth Avenue. The full Committee meeting begins on Wednesday, September 3, 1997, at 7:30 a.m. with adjournment scheduled for 5:30 p.m.. The meeting on Thursday, September 4, 1997, will reconvene at 7:30 a.m. and is scheduled to adjourn at 3:00 p.m. On Friday, September 5, 1997, the Committee begins deliberations at 7:30 a.m. and is scheduled to conclude at 4:00 p.m.

The two public input sessions are scheduled in conjunction with the full Committee meeting in the same location. The first will occur on September 3, 1997, from 7:30-9:00 p.m. The second will occur on September 4, 1997, from 3:30-5:00 p.m.

FUTURE MEETING DATES: The Committee has scheduled one more meeting: January 21-23, 1998 in Salt Lake City, Utah. ADDRESSES: Materials or written comments may be transmitted to the Committee through Corinne S. Wellish, Designated Federal Officer, NACEPT/TMDL, U.S. EPA, Office of Water, Office of Wetlands, Oceans, and Watersheds, Assessment and Watershed Protection Division (4503F), 401 M Street, SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Corinne S. Wellish, Designated Federal Officer for the Total Maximum Daily Load Committee at 202-260-0740.

Dated: July 28, 1997.

Corinne S. Wellish,

Designated Federal Officer [FR Doc. 97-20581 Filed 8-4-97; 8:45 am]

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Total Maximum Daily Load (TMDL) Program

FEDERAL ADVISORY COMMITTEE ON TMDLS

Agenda for Fourth Full Committee Meeting

September 3 - 5, 1997
Fifth Avenue Suites Hotel, Portland, Oregon

[Background](#)
[Goals for the Meeting](#)
[Overall Plan for Committee Activities, September 3-5, 1997](#)
[Pre-Meeting Activities: Tuesday, September 2](#)
[Wednesday, September 3](#)
[Thursday, September 4](#)
[Friday, September 5](#)

Background:

To date, the Federal Advisory Committee on Total Maximum Daily Loads (TMDLs) has met three times. At the first meeting in Herndon, Virginia (November 1996), EPA staff briefed Committee members on the TMDL program and the Committee preliminarily identified issues it would consider. The Committee also assigned those issues to workgroups made up of Committee members for initial analysis and refinement.

Three workgroups (the Framework, Listing and Science & Tools Workgroups) reported to the full Committee during its second meeting in Galveston, Texas (February 1997). The Committee discussed the matters being deliberated by those workgroups and received further briefings on TMDL issues from State representatives.

At its third meeting in Milwaukee, Wisconsin in June 1997, the Committee reviewed recommendations from four Workgroups (Listing, Science & Tools, Criteria for TMDL Approval, and Management & Oversight) and began work towards consensus on those recommendations. The Committee also received briefings from representatives of the agricultural community and staff of the Wisconsin Department of Natural Resources regarding water quality and TMDL-related matters.

At its fourth meeting in Portland, the Committee will: continue work towards consensus on issues and recommendations presented in Milwaukee; take up a number of new issues for which the Workgroups have developed options or recommendations; plan for the drafting of its final report and recommendations and receive briefings from several representatives regarding their perspectives on the TMDL program (briefing from the State of Oregon, Tribal representatives, citizen group representatives, and representatives of the forestry industry are planned).

Goals for the Meeting:

At its fourth meeting, the Committee plans to:

▼ Obtain needed input, including:

- Information and advice from representatives of citizen groups, the forestry industry, and Tribes;
- Technical information on TMDL issues from the Oregon Department of Environmental Quality;
- An update from EPA officials on national TMDL program activities, and
- Public comment on TMDL issues;

▼ Work towards consensus on options for approaches to identifying (listing) impaired waters under Section 303(d)(1)(A) of the Clean Water Act:

- Consider recommendations/refinements from the Listing Workgroup, and
- Reach consensus on preferred options to the extent possible;

▼ Reach consensus on recommendations for improving the science and tools that support the TMDL program:

- Consider refined recommendations from the Science and Tools Workgroup, and
- Reach consensus on preferred options to the extent possible;

▼ Work towards consensus on approaches to criteria for approval of TMDLs and options for assuring implementation of TMDLs:

- Consider refined and expanded recommendations from the Criteria for Approval Workgroup, and
- Reach consensus on those recommendations to the extent possible;

▼ Work towards consensus on approaches for EPA management and oversight of the national TMDL program:

- Consider refined recommendations from the Management & Oversight Workgroup, and
- Reach consensus on those recommendations to the extent possible;

▼ Review matters identified by the Workgroups as "consensus calendar" matters not needing further discussion by the full Committee;

▼ Discuss a proposed outline and approach for preparing the Committee's report to EPA; and

▼ Plan for the Committee's fifth meeting (January 21-23, 1998, in Salt Lake City, Utah). No meetings are scheduled for the Committee after January 1998.

Overall Plan for Committee Activities, September 3-5, 1997

- The attached proposed agenda, which provides specific information for the full Committee Meeting, may be revised (except for start times of public comment periods) by the Committee as appropriate.
- **Dress for the meeting is casual.**
- The meeting, including small group breakout sessions, will be **open to the public**; however there may be space limitations, especially for the breakout sessions.
- Members of the public who wish to speak during the public comment periods will be asked to sign up in advance or at the beginning of the comment period. Generally, speakers will be called upon on a first-come, first-served basis. Oral comments should be brief (no more than 5 minutes); detailed written comments are welcome. Commenters may be asked to respond to questions from Committee members.
- Assignments of Committee members to small groups for the breakout sessions will be made at the meeting in Portland. At least one representative from the workgroup whose recommendations are being considered will be assigned to each small group to help facilitate the session and provide information on workgroup deliberations.

▼ PRE-MEETING ACTIVITIES:

Tuesday, September 2:

Many Committee members will have arrived in Portland by Tuesday evening. Some Workgroups may meet to prepare their presentations to the full Committee. Workgroup meetings may be scheduled for the afternoon or evening, as determined by the Workgroup members.

Wednesday, September 3, 1997:

▼ **FULL COMMITTEE MEETING:**

- The full Committee will **convene at 7:30 AM** for an informal breakfast briefing by staff of the Oregon Department of Environmental Quality.
- Beginning at **8:00 AM**, the formal meeting will begin with a review of the proposed agenda, the consensus calendar and goals for the meeting.
- **New developments affecting the national TMDL program** since the Committee's last meeting will be presented by Geoff Grubbs, Director of EPA's Assessment and Watershed Protection Division.
- The **Listing Workgroup, Science & Tools Workgroup, Criteria for Approval Workgroup** and **Management & Oversight Workgroup** will briefly present their refined recommendations on "**old issues**" (matters discussed but not entirely resolved at previous meetings).

▼ **SMALL GROUP SESSION:**

- Following the morning break, the Committee will reconvene in three **small groups** to work towards consensus on the "**old issues**." Because all of the issues are linked or closely related, each small group will address all of the "old issues."

▼ **FULL COMMITTEE SESSION:**

- After lunch, the **full Committee** will reconvene to hear status reports from the small groups, discuss the "**old issues**," and plan for the following morning's session. The Committee will decide whether to continue small group discussions or have the full Committee work towards consensus on the "old issues."
- Following the afternoon break, Tribal representatives will brief the Committee on their concerns/interests in the TMDL program.
- The Committee will adjourn for dinner at approximately 5:30 PM.

▼ **PUBLIC COMMENT PERIOD:**

- Following the dinner break, the Committee will reconvene **at 7:30PM** in plenary to hear public comments (another public comment period is scheduled for Thursday afternoon). The public comment period is expected to end at approximately 9:00 PM.

Thursday, September 4, 1997:

▼ **FULL COMMITTEE MEETING OR SMALL GROUP SESSIONS CONTINUE ON "OLD ISSUES":**

- At **8:00 AM**, the Committee will convene either in plenary or in small groups (as determined on Wednesday afternoon) to **continue work towards consensus**.

▼ **FULL COMMITTEE MEETING CONTINUES:**

- Following the morning break, the full Committee will **identify areas of consensus on old issues** and may give instructions to the Workgroups, as appropriate.
- **Citizen group** representatives will provide a **briefing** to the Committee on their perspectives on the TMDL program during an **informal luncheon**. Following the briefing, there will be a 30 minute break for Committee members.
- After the break, the **Management & Oversight Workgroup** and the **Criteria for Approval Workgroup** will briefly present recommendations/options on **new issues** which have not previously been discussed by the full Committee.

▼ **SMALL GROUP SESSIONS:**

- The Committee will break into three **small groups** to review the recommendations and options on new Management & Oversight and Criteria for Approval issues. They will develop feedback for the Workgroups and, to the extent possible, identify areas of consensus.
- The Committee will **break at 3:00 PM**.

▼ **PUBLIC COMMENT:**

- From 3:30 to 5:00 PM, the full Committee will take public comment.

▼ **SOCIAL EVENT:**

- A **group dinner** will be arranged for Committee members.

Friday, September 5, 1997:

▼ **FULL COMMITTEE MEETING CONTINUES:**

- The full Committee will convene at **7:30 AM** for an **informal breakfast** and **briefing** from representatives of the **forestry** industry.
- At **8:30 AM**, the **small groups will report** on their progress from Thursday afternoon on the **new Management & Oversight and Criteria for Approval** issues and the full Committee will briefly discuss these issues.
- At **9:30 AM**, the **Listing** and **Science & Tools** Workgroups will present their recommendations and options on "**new issues**" not previously discussed by the full Committee.

▼ **SMALL GROUP SESSIONS:**

- Following the morning break, the Committee will reconvene in three **small groups**

to consider and work towards consensus on the "**new issues**" for **Listing and Science & Tools**.

▼ **FULL COMMITTEE RECONVENES:**

- At **11:30 AM**, the **small groups** will **report** to the full Committee on their progress on the **new Listing and Science & Tools issues** and the full Committee will briefly discuss these issues.
- Beginning at **12:30 PM** with a **working lunch, procedural and planning matters** will be taken up by the full Committee in discussions led by the **Framework Workgroup**, including:
 - review of an outline for the Committee's report/recommendations; and
 - a proposed approach for drafting the report/recommendations.
- After lunch, the Committee will review its **overall status and progress** and plan its future activities. Among other things, the Committee may review:
 - Areas of consensus/non-consensus on major issues;
 - The role and future activities of the workgroups;
 - State participation in Committee activities; and
 - Plans/agenda for the fifth meeting in Salt Lake City in January as well as any additional Committee activities.
- The Committee meeting will adjourn at 4:00 PM.

Review the Proposed Agenda for the September 3 - 5, 1997 Meeting of the Full TMDL FACA Committee.

Total Maximum Daily Load (TMDL) Program



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Federal Advisory Committee on Total Maximum Daily Loads (TMDLs)

Summary of Meeting Four

September 3-5, 1997
Fifth Avenue Suites Hotel
Portland, Oregon

Note: This summary of the fourth meeting of the Federal Advisory Committee on Total Maximum Daily Loads was reviewed and approved by the full Committee at the May 4-6, 1998 meeting in Atlanta, Georgia.

Contents

Meeting Overview
Participants

Wednesday, September 3, 1997

State Briefing: The Pacific Northwest TMDL Experience
Welcome, Introductions, and Agenda Review
EPA Update: New Developments Affecting the TMDL Program
Workgroup Reports
Full Committee Review of Old Issues
Briefing on Tribal Issues
Public Comment Period

Thursday, September 4, 1997

Full Committee Review of Old Issues (continued)

Working Lunch: Citizen Group Representatives' Perspectives on the TMDL Program
Workgroup Reports: Introduce Options and Recommendations on New Issues
Public Comment Period

Friday, September 5, 1997

Briefing on Forestry Issues
Small Group Report on the Implications of Being Listed
Workgroup Reports: Introduce Options and Recommendations on New Issues
(continued)
Issues Associated with the Consensus Calendar
Next Steps Preparation of Draft Committee Report and Future Meetings
Adjournment
Approval of Meeting Summary

Meeting Overview:

This meeting summary describes the discussions and actions that occurred at the fourth meeting of the Federal Advisory Committee on Total Maximum Daily Loads (TMDLs), held September 3-5, 1997 at the Fifth Avenue Suites Hotel in Portland, Oregon. The following were the primary outcomes of the meeting:

- The Committee received additional input on the TMDL Program and related water quality issues from States, local governments, EPA, and the general public.
- The Committee received briefings from the Listing, Science and Tools, Criteria for Approval, and Management and Oversight Workgroups on their activities since the Milwaukee meeting. These briefings included discussions of several "old" issues that required further discussion, as well as several "new" issues that had not been previously discussed. The Committee provided feedback to the Workgroups regarding these issues and narrowed down the list of remaining, unresolved issues.
- The Committee agreed to hold several additional conference calls to close out Workgroup discussion of old issues and to move new/expanded issues as close to consensus as possible.
- A small group was formed during the meeting to more fully discuss a proposal regarding the implications of being listed, focusing in particular on identifying ways to ensure that impaired waterbodies are stabilized pending development of a TMDL. The proposal included a recommendation that States and Tribes complete a "watershed assessment" for all listed waters that would identify a number of pieces of information that would be needed to eventually develop the TMDL and might also include some statement about the types of control activities that would eventually be implemented. The small group refined this proposal, reported back to the full Committee, and agreed to write up their recommendations for further discussion.
- Committee members identified and discussed several concerns that they had regarding items on the Consensus Calendar. (Items on the Consensus Calendar were identified by the Committee Workgroups prior to the meeting as those that were generally expected to be noncontroversial or that have already been discussed in considerable detail.)
- The Committee discussed the process that will be used to draft its final report to the EPA Administrator. It was agreed that a preliminary draft of the report, with placeholders (if necessary) for several remaining issues, would be prepared and circulated to the entire Committee prior to the Salt Lake City meeting in January.
- The Committee agreed that a sixth and final meeting (to follow the one already scheduled for Salt Lake City in January) would be necessary to meet EPA's expressed need for a final report no later than May 1998. This meeting was

tentatively scheduled for April or May 1998 at a location to be determined. [The Committee subsequently agreed that their final meeting would be held May 4-6, 1998, in Atlanta, Georgia.]

Participants:

Committee Members in Attendance:

Bob Adler	Richard Parrish
Fredric Andes	John Roanhorse
John Barrett	Danita Rodibaugh
Nina Bell	Melissa Samet
J. Brad Burke	Linda Shead
Cheryl Creson	Susan Sylvester
L.D. McMullen	Lydia Taylor
William Nielsen	Ed Wagner
Robert Olszewski	

Committee Members Absent:

Phil Cummings
Dale Givens
Jane Nishida
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Ex-Officio Committee Members in Attendance:

John Burt, Natural Resources Conservation Service
Art Bryant, U.S. Forest Service
Geoff Grubbs, U.S. Environmental Protection Agency

EPA Representatives:

Donald J. Brady, Chief, Watershed Branch, AWPDP, OWOW
Jim Curtin, Attorney, Office of General Counsel
Kathy Gorospe, American Indian Environmental Office
Theresa Tuazon, TMDL Team Member, Watershed Branch, AWPDP, OWOW
Robert H. Wayland, Director, OWOW
Corinne S. Wellish, Designated Federal Official, AWPDP, OWOW
Bruce Zander, EPA National Expert on TMDLs, Region 8

Public Attendance:

Approximately 95 members of the public attended the meeting.

Facilitator:

Martha Prothro, Ross & Associates

Conference Support:

Wednesday, September 3, 1997

State Briefing: The Pacific Northwest TMDL Experience:

Bob Baumgartner from the **Oregon Department of Environmental Quality** spoke to the Committee on Wednesday morning during an informal breakfast briefing. Mr. Baumgartner has helped manage the TMDL program in Oregon and shared some of his experiences regarding both technical and programmatic issues. He explained that States need to be provided a great deal of flexibility in terms of how they develop TMDLs and that it is very important to involve the public as early and as often as possible. Mr. Baumgartner also emphasized the complexity associated with the decision to allocate loads and the need to have an established link between the load reductions and the actual controls that will be implemented (e.g., best management practices (BMPs) need to be sited based on need as opposed to convenience). Mr. Baumgartner also discussed the issue of how much science is needed before action can be taken and suggested that, in many cases, some activity can be initiated and then refined as the process progresses.

Bruce Cleland, TMDL Coordinator for Region 10, briefly addressed the Committee regarding his experience developing a TMDL for the Tualatin River. He emphasized the importance of public involvement and told Committee members that it is very important for those who develop TMDLs to document their assumptions, especially as they relate to incorporating a margin of safety. He also said that the role of science is very important as it relates to TMDL development, but that it shouldn't drive the entire process.

Welcome, Introductions, and Agenda Review:

Martha Prothro officially opened the meeting by welcoming the Committee, the State and EPA representatives in attendance, and the general public. Each Committee member, the Ex Officio members, and the EPA representatives then introduced themselves. Following these introductions, Ms. Prothro reviewed the goals for the meeting and the Committee adopted the proposed agenda. The Committee also approved the minutes from the previous two meetings.

EPA Update: New Developments Affecting the TMDL Program:

Geoff Grubbs, Ex Officio Committee member and Director of EPA's Assessment and Watershed Protection Division, thanked the Committee members for all of their efforts and told them he was very satisfied with the progress the Committee has thus far made. He also emphasized that the Portland meeting would be very important in terms of starting to "put the pieces together" and to start to reach consensus on several remaining issues. He reminded the Committee that EPA is most interested in receiving feedback regarding "core" issues and that many details will necessarily be worked out later. EPA's long-term goal is to have new guidance and regulations in place prior to the April 2000 listing cycle. For that to happen, the Agency will need the Committee's report by April or May 1998 so that the proposed rule-making process and development of guidance materials can begin.

Mr. Grubbs also briefly updated the Committee on several developments affecting the TMDL program since the Milwaukee meeting in June:

- The 1998 listing guidance was recently sent to the States and Regions and included a

provision asking that States georeference their listed waters to EPA's Reach File Version 3 (RF3) database. (The process of georeferencing involves assigning reach addresses to listed waterbodies to establish their locations relative to one another in a manner similar to street addressing.) Georeferencing will allow States and EPA to analyze and track patterns, trends, and progress on local, State, regional and national scales.

- EPA's December 20 *Draft TMDL Implementation Strategy* has been re-named EPA's *TMDL Program Strategic Plan*. The revised document will include a much broader description of the TMDL Program and will be used to keep the public informed of EPA's long-term vision for the Program. The next version of the Strategic Plan should be available within a few months and a draft will be circulated to the Committee for comment.
- EPA is continuing to work with Indian Tribes to encourage and assist them in assuming TMDL program responsibilities and to help protect Tribal interests by encouraging cooperation among Tribes, States, local governments, and EPA. Key issues associated with these efforts include:
 - How to give Tribes TMDL program authority
 - Identifying what EPA's role should be in the absence of Tribal authority
 - Addressing the need for water quality standards for Tribal waters
 - Building Tribal capacity
 - Protecting Tribal interests outside of Indian country (e.g., on ceded lands)

Responding to questions, Mr. Grubbs explained that a summary of the status of current litigation would be available to Committee members and to the public and that the pace and implementation guidance incorporates some of what has been agreed to in recent settlements. He also stated that States have not listed waterbodies impaired due to atmospheric deposition in a consistent manner and said that the 1998 listing guidance explains that EPA's position is that these waters should be listed. Bob Wayland, Director of EPA's Office of Wetlands, Oceans, and Watersheds, stated, more broadly, that the Office of Water would be working with EPA's Office of Air and Radiation to develop national and regional air deposition strategies, with public input.

Workgroup Reports:

Follow Mr. Grubbs' presentation, the Committee workgroups reported on their activities since the Milwaukee meeting. The focus was on "old" issues that still need to be resolved by the full Committee. (More complete summaries of the workgroup discussions that took place between the Milwaukee and Portland meetings are available on the TMDL Home Page at <http://www.epa.gov/OWOW/tmdl/index.html>.)

Listing Workgroup

The Listing Workgroup made a brief presentation to the Committee regarding their activities since the Milwaukee meeting. The Workgroup met four times over the summer and addressed several "old" issues that needed additional debate and deliberation.

- The Workgroup revisited the policy objectives of the "segmented approach" to listing that had been recommended at the Milwaukee meeting. The Workgroup agreed that it should serve two important policy objectives: (1) improving and organizing State/EPA management of the 303(d) list and (2) providing important information to the public. The Workgroup discussed, but did not reach agreement on whether the segmented approach, as envisioned, would serve a third objective: providing a framework to tailor constraints (e.g., the prohibition on new or additional

discharges) on source actions between the time of listing and TMDL development.

- The Workgroup also again discussed the question of whether threatened waters should be listed on the 303(d)(1) list. Workgroup members agreed that environmental agencies should work to protect threatened waters from further degradation, but were divided over whether EPA should require the listing of these waters. They asked the Committee to focus on this issue during the Portland meeting and especially to provide feedback regarding the relationship between the Clean Water Act's antidegradation policy and how threatened waters should be handled.
- The Workgroup also discussed the implications of being listed (i.e., what constraints would be placed on point and nonpoint sources during the time between listing and TMDL development). They asked the Committee to address whether constraints should be different for new versus existing sources, or whether there might be exceptions to these constraints (e.g., in brownfield areas).

Criteria for Approval Workgroup

The Criteria for Approval Workgroup reached consensus on several "old" issues between the Milwaukee meeting and the Portland meeting. These included:

- Making several refinements to the hierarchy approach.
- Identifying the components of an implementation schedule to accompany a TMDL (independent of whether it should be included under section 303(d) or 303(e)).

The Workgroup agreed that the hierarchy approach would need to be objectively (rather than subjectively) applied and that the approach would need to be clearly explained to stakeholders and agency personnel. A flowchart was developed to help address these concerns. The Workgroup asked that the Committee provide feedback on whether the hierarchy approach is sufficiently clear and workable and whether it could be made more understandable and easier to apply.

Although the Workgroup was able to reach consensus on most components of a TMDL implementation plan, it asked the Committee to consider whether the overall package of implementation plan components is appropriate and workable. The Workgroup also acknowledged that it was unlikely that consensus would be able to be reached on the issue of whether EPA has the legal authority to require an implementation plan as part of an approvable TMDL (a special subgroup had been formed to address this issue).

Science and Tools

As requested by the full Committee in Milwaukee, the Science and Tools Workgroup continued to discuss the issue of decision making under uncertainty. Workgroup members were able to reach consensus on several points related to this issue, but were unable to fully explore other issues due to time constraints. In particular, the Workgroup asked the Committee to provide feedback regarding the role of the statutorily-required margin of safety, as well as the appropriateness of the use of surrogate TMDL measures (e.g., percentage shade cover as part of a TMDL for temperature).

Full Committee Review of Old Issues:

To provide members greater opportunity for in-depth discussions, the full Committee formed

three separate breakout groups to discuss the old issues identified by each workgroup. These breakout groups met separately for several hours and then reported back to the full Committee.

Report from Group 1

Several members of Group 1 supported the idea that threatened waters should be listed because of the need to bring attention to them and the fact that States should address negative trends in water quality. However, the group felt that threatened waters should be narrowly defined as those that are imminently in danger of becoming impaired by the time of the next listing cycle. The group also agreed that the implications of being listed should apply to both point and nonpoint sources, but acknowledged that no new control authorities are created as a result of a listing. The group felt that implementation plans should be required components of approvable TMDLs, but also suggested that the Criteria for Approval Workgroup needs to continue to refine the specific wording that they have developed. Several members of the group felt that the hierarchy approach might be too burdensome on States and emphasized that the use of best professional judgement should be a consensus decision (i.e., don't rely on the judgement of only one person).

Report from Group 2

Group 2 also provided tentative support for listing imminently threatened waters and suggested that the decision to list a threatened water should be made using only monitoring or actual data (i.e., not evaluative assessments such as a modeling prediction) so as to not "dilute" the 303(d)(1) list. The group also felt that the implications of being listed should apply to both point and nonpoint sources, so long as the authority to control nonpoint sources exists. The group expressed a concern, though, that the Committee was spending too much time discussing the details of this issue and recommended that it should focus more on main points and principles. Group 2 also recognized that continued effort is needed on the hierarchy approach flow chart and pointed out that it does not address phased TMDLs.

Report from Group 3

Members of Group 3 were not able to agree as to whether threatened waters should be listed. Several members felt that they should not be listed because of the increased workload they place on States, the arbitrary nature of determining which waters are threatened, and the fact that the Clean Water Act's antidegradation policy is the proper mechanism to protect these waters. Group 3 also discussed the implications of being listed and reminded the Committee of how difficult it is to distinguish between "new" and "existing" nonpoint sources. Some members of the group were concerned that the hierarchy approach relied too much on best professional judgement, and also suggested that it over-emphasized control actions (versus collecting more data) in situations of uncertainty. The group disagreed with the term "surrogates" and suggested that they might be better called "unconventional loadings." The group also discussed the "segmenting" approach, with several members expressing the view that it should not be used for prioritizing waters (because States will consider various other factors in this decision) or for assigning waters different implications with regard to TMDL development.

Following the breakout group reports the Committee held a plenary session to further discuss these old issues. Most of the discussion focused on the threatened waters issue. Among the points that were made were:

- Several Committee members stated that threatened waters should be listed only if that group of waters is narrowly defined.
- Several Committee members suggested that they would be more comfortable with not listing threatened waters if they could be assured that the Clean Water Act's Tier

- 2 antidegradation policy would be more effective.
- There is a statutory issue here in terms of whether Congress intended threatened waters to be addressed by the TMDL program.
- One option might be to authorize States to list threatened waters but not require them to do so. Another option might be to require States to list threatened waters until they can prove that their antidegradation policy is more effective.
- There was general support for the hierarchy approach, but concerns were voiced regarding several of its aspects. These included the use of a "margin of safety" and "best professional judgment." There was no consensus on how those concepts should be applied, although there was general agreement that a margin of safety should not be used by an agency as an excuse for not collecting more data.
- At least one Committee member suggested that if implementation of a TMDL will have major cost implications, more technical rigor should be required during TMDL development to lower the margin of safety.

Briefing on Tribal Issues:

Kathy Gorospe from EPA's American Indian Environmental Office addressed the Committee and discussed a variety of issues relating to water quality on Tribal lands. She told the Committee that there are 562 Tribes, 1.5 million Tribal members, and more than 54 million acres of Tribal lands. She also explained that the federal government's official policy recognizes Tribes as sovereign, self-ruling governments and that it is important for EPA and State agency staff to be aware of this government-to-government relationship. She also explained that only very limited information is available on water quality on Tribal lands because of the current lack of an infrastructure to address water quality concerns. She told the Committee that EPA is encouraging Tribes to develop their own programs and is assisting them with developing work plans and other management tools.

Paul Kraman, from the Northwest Indian Fisheries Commission, also spoke to the Committee and explained his role as the project leader for an effort in Washington state to develop a Tribal-State interaction process for the TMDL program. He explained that the Tribes' participation in the State of Washington/Tribal effort is self-funded (i.e., the Tribes do not receive outside funds). Mr. Kraman also discussed the interaction that occurred between the Tribes that were interested in participating in the effort and the state and EPA staff. He also explained that the Tribes have developed a significant level of expertise and have been able to share this with their state and federal counterparts. A Memorandum of Understanding has been signed to outline the various roles of the participating agencies, and a guidance manual has been developed to be used by the Tribes as they develop their programs.

Martha Fox, an attorney representing the Puyallup Tribe in Washington, discussed her experience with a TMDL developed for the Puyallup River watershed. The Puyallup watershed includes several point sources that have contributed to low dissolved oxygen levels in the river and the watershed is also expected to experience a rapid growth in population over the next several years. For these reasons, the state of Washington began to develop a TMDL for the river in 1993. Members of Puyallup Tribe, whose reservation is located at the downstream portion of the watershed, felt that they were not adequately involved in the development of the TMDL and were concerned that aquatic habitat in their part of the river would not be protected; they also expressed concern that they had not been provided a fair loading allocation to allow for future economic growth. These concerns were brought to the attention of Washington state and an improved working relationship has since been established. The state staff now recognize the government-to-government relationship that exists and there is an agreement that the state will perform most of the technical work, while EPA and the Tribe will address permitting issues.

Ted Strong, Director of the Columbia River Intertribal Fish Commission, provided the Committee with a historical perspective of the relationship between Indian Tribes and the federal government. He explained that Indian Tribes have been fighting for unspoiled lands

and unspoiled waters for hundreds of years, and that the treaties that were signed between Tribes and the U.S. government were negotiated agreements in which Tribes gave up some, but not all, of their rights. He went on to highlight the many problems that still exist on Tribal waters, including dioxin-contaminated fish and water that is unsafe to drink. He told the Committee that what is needed is less talk and more action and he informed Committee members that the Tribes are ready to be good partners in this process.

Public Comment Period:

Martha Prothro opened the public comment period by welcoming everyone and explaining the role of the FACA Committee in providing recommendations to EPA on how to improve the TMDL Program. She explained that, although a broad range of backgrounds and perspectives are represented on the Committee, it is not all-inclusive. The public sessions that will be held at this meeting and future ones will be an important mechanism the Committee uses to solicit input from others.

The first public comment was made by **Langdon Marsh, Director of the Oregon Department of Environmental Quality**. Mr. Marsh provided a summary of Oregon's Healthy Streams Partnership and explained that it would provide a framework for developing TMDLs over the next 10 years. He described the impetus for developing the Partnership, its advantages over federal controls, and the impact it has thus far had. He felt that the lessons to be learned from this process are that: 1) it takes a variety of circumstances to bring everyone to the table; 2) political leadership is essential; and 3) a great deal of time must be dedicated to discussing the range of issues that are important to different stakeholder groups.

¹**Ron Mickle, Wyoming Department of Agriculture**, addressed the Committee on behalf of the **National Association of State Departments of Agriculture (NASDA)**. Mr. Mickle explained that NASDA members have been following the efforts of the Committee and have developed a policy statement that outlines their positions on a number of issues. Mr. Mickle then briefly discussed a number of these positions, including NASDA's strong preference that TMDLs be implemented on a voluntary, locally-driven basis; that TMDLs should focus on scientifically defensible and economically feasible solutions; and that efforts should be results oriented (i.e., don't waste so much time on administrative matters).

Mark Nestlen also addressed the Committee on behalf of **NASDA** and explained that the Association has a number of ongoing initiatives to address water quality problems. He discussed the use of Resource Management Plans (RMPs) and how they can be used to facilitate access to technical and financial assistance for voluntary implementation of BMPs on agricultural lands. He said that RMPs are being adopted in a number of states and that they incorporate all of the elements of a successful watershed protection approach (e.g., locally driven, participation through incentives, planning process).

Gary Garrison from the Northwest Timber Workers Resource Council (NTWRC) explained that he was still on the learning curve regarding TMDLs, but was concerned about any type of listing activities because of his experience with the spotted owl issue. He also expressed concern about any program run out of Washington, D.C., recommended that incentive programs be used instead of punitive approaches, and urged the Committee to avoid making recommendations that would lead to unfunded mandates.

Kenneth Ashby, President of the Utah Farm Bureau, told the Committee that voluntary programs can accomplish much more than can enforceable ones, that point and nonpoint source problems cannot be addressed in the same manner, and that mandatory programs will lead states to implement overly strict controls. He also summarized a successful voluntary program that has been developed for the Chalk Creek watershed in Utah.

Fred Otley, Oregon Cattlemen's Association, told the Committee that regulations that don't work can have significant impacts on cattle operations. He explained that the credibility of many water quality standards is questionable, especially those dealing with temperature. He also encouraged the Committee to recommend strict data quality standards for listing decisions and to come up with a dynamic management approach that can respond to dynamic physical conditions.

Lial Tischler, a consulting engineer with Tischler/Kocurek, has been working with water quality issues for 30 years. He explained that the problem with listing a threatened water is that it will have a "chilling effect" on any industries that might wish to open a new facility on that waterbody. This will be due to the uncertainty and length of time it will take to get a permit as much as any fear of excessive controls that might be placed on discharges.

Margaret Delp from the Northwest Office of American Rivers reminded the Committee that one of the primary reasons many Western rivers are impaired is due to diverted flows. She encouraged the Committee to address this issue directly and to recommend that EPA provide clear direction to States regarding allocation decisions for flow-impaired waters.

Reed Benson addressed the Committee on behalf of WaterWatch, an organization that works at both the state and federal levels on issues related to water quality. Mr. Benson also told the Committee that water withdrawals are a major problem in Western streams and rivers, and suggested that this is an issue for which it is both appropriate and necessary for the federal government to take a leading role. Too much legal and political protection exists at the state level for any meaningful changes to be made. Mr. Benson also questioned the viability of voluntary controls for addressing water rights issues; he has seen too many instances where they simply have not been adequately addressed.

Jerry Retzer, a private citizen from Portland, explained that he lives in a part of the city that is the headwaters for three different creeks. He said that efforts to protect these headwaters have been hampered by development pressures and an inability of the city to enforce stormwater controls. He identified several specific examples and encouraged the Committee to not neglect issues associated with urban water quality problems.

Sharon Beck, President-elect of the Oregon Cattlemen's Association, told Committee members that the physical condition of a watershed depends on site-specific physical, biological, and chemical factors. She suggested that water temperature is not a valid reason to list a water because current standards are inappropriate. Ms. Beck also pointed out that there is a need to inform landowners who are causing water quality problems of the situation so that they can take actions to address it themselves.

Thursday, September 4, 1997

Full Committee Review of Old Issues (continued):

The Committee continued to hold a plenary discussion on the old issues that had been identified by the workgroups prior to the meeting (and which had been discussed in breakout groups on Wednesday). They tabled the discussion on threatened waters so that they could address the issue of the implications of being listed. Members were reminded that this issue specifically refers to whether and to what extent point and/or nonpoint source dischargers should be controlled during the period after listing but before a TMDL has been developed (the Committee agreed that once the TMDL is in place it would govern loading decisions). Members were also reminded that these controls would be limited to actions having an impact on the pollutant causing the impairment.

The following points were made by various Committee members during the plenary session:

- Several Committee members strongly supported the importance of considering flexibility in prohibiting new or increased loadings from point sources to listed waters until a TMDL is developed. Other members disagreed, stressing the need for flexibility so as to not put a complete stop to economic growth.
- Several members pointed out that any controls on dischargers could last for as long as 13 years (perhaps longer), based on EPA's pace and implementation guidance. This will significantly impact economic growth in these areas.
- The impact on economic growth can be addressed by either developing the TMDL sooner or promoting "smart" development that will have limited impact on water quality.
- The critical link in this process is between land use planning and the permitting process. Local governments should not allow development to occur in impaired watersheds until there is an understanding regarding its impact on loadings.
- There need to be exceptions to a strict limitation on dischargers. For example, industry needs to be able to adapt to changing markets and re-development of brownfield areas should be promoted.
- Several members felt that strict limitations on discharges would prompt industry to develop better control technologies; other members had less confidence that this would occur.
- There was discussion of whether discharge controls should apply to nonpoint sources and, if so, what types of controls might be appropriate. It was pointed out that an important issue in this regard is the extent to which agencies have the legal authority to regulate nonpoint sources.
- At least one Committee member felt that the discussion on the implications of being listed was somewhat irrelevant because it had already been agreed that no new nonpoint source control authority is created by the TMDL process.
- The forest industry is very sensitive to the issue of whether long-term silvicultural operations (e.g., timber harvests occurring every 40 years) would be considered a new or an existing source; the issue of distinguishing between new and existing activities was raised for other types of sources as well.

The Committee realized that the dimensions of this issue seem to change depending on specific examples, but also realized that it would be impractical for them to identify and discuss all possible situations. A proposal was made that States should develop brief interim plans that would address possible control strategies and would cover the period between listing and TMDL development. The Committee then discussed the various advantages and disadvantages of this proposal:

- Although an interim plan sounds like a good idea, it might not be practical. Many States barely have the resources to develop TMDLs, let alone to develop interim plans for all their listed waters.
- Several members were concerned that an interim plan might be used as a way to erode existing authorities.
- Another option might be to have a general prohibition on increased loadings for listed waters unless an approved plan was in place showing that there would be a net improvement in water quality.

After these discussions the Committee decided that the proposal merited further discussion among a new subgroup of members. This special subgroup was formed and asked to report back to the full Committee on Friday morning.

Working Lunch: Citizen Group Representatives' Perspectives on the TMDL Program:

Don Elder from River Network addressed the Committee during an informal lunch briefing. River Network is a national organization based in Oregon that works to promote the watershed approach to solving water quality problems. Mr. Elder expressed his belief that we have made a lot of progress in cleaning the Nation's waters, but that additional improvements are getting harder and harder to come by. His view is that most states have not adequately implemented their antidegradation policies and that such policies are one of the best means to address water quality concerns. Mr. Elder also told the Committee that implementing TMDLs is a long-term process and there is no set time by which you know success has been achieved.

Randy Benke is an attorney who has worked on water quality issues in Tillamook Bay. He told the Committee that approximately \$5 million worth of Rural Clean Water Project (RCWP) funds have been devoted to solving water quality problems in the Bay, but that water quality is still impaired due to point and nonpoint source discharges. Mr. Benke suggested that a National Estuary Program (NEP) project that is currently in place for the Bay is likely to meet a similar fate because, as with the RCWP, it relies on voluntary actions and the efforts of local governments to implement discharge controls. He said that local governments cannot by themselves achieve compliance with water quality criteria and that States and EPA need to take a more proactive role to ensure the effective implementation of BMPs. Adoption of TMDLs for the watershed would do more to improve water quality in Tillamook Bay than the RCWP and NEP project combined, he said, because TMDLs would define a limited natural resource, water quality, and promote competition among the point and nonpoint source dischargers for the use of it.

Workgroup Reports Introduce Options and Recommendations on New Issues:

The Committee next received briefings from the Criteria for Approval, Science and Tools, and Management and Oversight Workgroups regarding new issues they had identified since the Milwaukee meeting.

Criteria for Approval

The Criteria for Approval Workgroup spent time discussing the issue of how the TMDL program should handle waters impaired due to legacy problems (defined as waters where the impairments are due to historic activities such as contaminated sediments, old logging roads, or abandoned mines). The Workgroup was able to reach consensus that legacy problems should be approached as if a feasible solution can be reached and a TMDL developed. The TMDL must include a load reduction allocation for the legacy problem, and some type of "action plan" for addressing the problem. As a last resort, if no strategy can be found to address the legacy problem, a rigorous use attainability analysis (UAA) would be required to review the appropriateness of the water quality standard.

The Workgroup also asked the Committee to provide feedback regarding its proposed approach to discussing allocation issues. The Workgroup's proposed approach would be to (1) recommend that EPA provide informational guidance to States and others about methods that have been used successfully in making allocation decisions and, (2) to the extent possible, try to identify general principles for States or EPA to use in allocation decisions. The Workgroup also had discussed the concept of partial approval of TMDLs, but did not reach consensus.

Science and Tools

The Science and Tools Workgroup asked the Committee to discuss the issue of data quality, especially as it relates to the use of ambient water quality monitoring data versus evaluative assessments when making listing decisions. (Evaluative assessments, such as are used in the section 305(b) reports, may lack scientific validity compared to monitoring data). The

Workgroup discussed the various types of data that would be considered "evaluative" and asked the Committee to provide it feedback regarding this issue.

Management and Oversight

The Management and Oversight Workgroup primarily considered pace and Tribal issues between the Milwaukee and Portland meetings. The Workgroup was generally comfortable with the 8-13 year time frame for developing TMDLs that was outlined in EPA's pace and implementation letter. Workgroup members realized that a number of factors will affect the pace at which TMDLs can be developed, and spent some time outlining these factors (e.g., number of waters, complexity, resources, availability of data). The Workgroup also requested feedback on an option it had proposed regarding Tribal issues. This option specified that EPA should develop an outreach strategy that would educate Tribes about the TMDL process and would also improve EPA and State understanding (and execution) of government-to-government relationships as they relate to TMDLs.

Following the workgroup reports the Committee briefly discussed the issue of allowing non-member participation in breakout group and plenary discussions. Specifically, several members suggested that greater representation of state perspectives was needed. After discussing the advantages and disadvantages of this proposal, and pointing out that final decisions on Committee membership could only be made by EPA, it was agreed that Mike Haire from the Maryland Department of the Environment would be invited to fully participate in Committee discussions for the remainder of the meeting.

After agreeing to this proposal the Committee again separated into three breakout groups to further discuss the "new" issues. The discussions of these issues are summarized below.

Public Comment:

Mary Scurlock spoke to the Committee on behalf of **Pacific Rivers Council**, a conservation group based in Eugene, Oregon, that focuses on conserving and protecting "Last, Best Places." Pacific Rivers feels that the Clean Water Act is an important tool to use in the fight to protect these "Last, Best Places" and would like to see the Committee strongly recommend the use of antidegradation policies. Ms. Scurlock also encouraged the Committee to recommend that threatened waters continue to be listed, that implementation plans be part of a TMDL, and that the issue of legacy problems be more fully discussed.

Mary Abrams, City of Portland Bureau of Environmental Services, summarized several TMDLs she has been involved with that illustrate many of the concepts that Committee members have been discussing. Ms. Abrams explained that good guidance is needed on how to address both point and nonpoint sources and said that it is often difficult to link legacy problems (e.g., PCBs, chlordane) to water column impacts. She also suggested that the uncertainty caused by inadequate data can lead to very difficult management decisions.

Mel Vargas, Texas Natural Resources Conservation Commission, strongly agreed with the concept of a TMDL implementation plan, but felt that the Committee still needed to work out certain details. Mr. Vargas also said that States should have the right to list threatened waters, but that there might need to be different strategies used to address them. He also agreed that States are amenable to the 8-13 year time frame for development of TMDLs, but that more attention needs to be paid to the funding that will be needed to accomplish this.

Don Essig, Idaho Division of Environmental Quality, highlighted several of the complexities associated with developing TMDLs and emphasized the need for surrogate measures. He also said that when developing TMDLs it is important to keep in mind social and economic constraints; an example is the need for farmers in southern Idaho to be able to

irrigate. Mr. Essig also questioned whether an 8 year time frame for developing TMDLs would be feasible if implementation plans had to be included.

Mike Medberry, Idaho Conservation League, thanked EPA for convening the Advisory Committee and discussed several TMDL issues in Idaho. He emphasized the need for stronger antidegradation policies, said that voluntary controls on agricultural practices don't always work, and recommended that threatened waters be listed. He also pointed out that it is possible to have both economic growth and high water quality and said that the Committee should seek a commitment from EPA to provide financial assistance to the States for TMDL development activities.

Don Parrish from the American Farm Bureau Federation told the Committee that there is a discrepancy between EPA's 305(b) data that show that agriculture is responsible for a large share of water quality problems and NRCS data which show that runoff from farms has been significantly reduced. He also said that State water quality programs need to be the centerpiece of efforts to restore water quality and reminded the Committee that agriculture has a long history of committing funds to conservation practices.

Allison Shipp, U.S. Geological Survey (USGS), spoke about the role of USGS in providing hydrologic information to States and Tribes and reminded the Committee that USGS does not have any regulatory authority. She said that USGS will continue to work with state agencies, businesses, and others to educate them about available water quality data and told the Committee to feel free to ask for any additional information they might need.

¹**Theresa Dennis, California Farm Bureau Federation**, spoke about the need for flexibility in state TMDL programs and said she was concerned that EPA's desire to settle lawsuits is undermining state authority. Ms. Dennis also expressed her opinion that section 303(d) was not intended to address waters impaired solely by nonpoint sources and provided several examples of successful, voluntary incentive-based approaches for implementation.

Lori Faha addressed the Committee on behalf of the **American Public Works Association** and said that the TMDL process needs to incorporate the principles of education, involvement, and equity. People need to be better informed of which waters are listed, both point and nonpoint source controls must be adopted, and it is important to take a holistic approach to watershed management (i.e., can't focus on only one pollutant at a time).

¹**Dave Peeler, Washington Department of Ecology**, identified several issues for the Committee to discuss, including the problem of setting load allocations for nonpoint sources. He also expressed a concern with the number of TMDLs that states will need to develop in the 8-13 year time frame and suggested that stronger regulations are needed to help drive voluntary approaches. Mr. Peeler also asked the Committee to address the issue of interstate and Tribal TMDLs.

Allen Noe, American Crop Protection Association, summarized several examples of agricultural programs that have been developed to address water quality issues (e.g., the National Conservation Buffer Program) and also said that TMDLs and other water quality management issues have been the topic of several recent conferences. ¹

¹ **Janet Gillaspie, Association of Clean Water Agencies**, said that members of her organization have worked extensively with TMDLs and have come up with a set of principles governing how they should be developed and implemented. These principles include making decisions based on good data, routinely reviewing the appropriateness of beneficial uses, and addressing water quality issues on a watershed basis. Ms. Gillaspie also emphasized that the TMDL program needs to be an incentive-based process.

¹Written comments submitted to Committee.

Liz Callison, West Multnomah Soil and Water Conservation District, told the Committee that voluntary agriculture programs don't always work and that local planning agencies are often too pro-development to be relied on to make impartial decisions. She provided several examples of instances in Portland where springs, streams, and wetlands had been paved over and where inadequate attention had been paid to leaking sewer pipes.

Lial Tischler, consulting engineer with Tischler/Kocurek, said that determining new versus increased discharges is not always a straightforward decision. For example, there are cases where the concentration of effluent might go down but, because the flow is greater, the total load increases. There are also problems associated with never being able to completely disinfect some pollutants (such as with fecal coliforms). These technical issues impact the types of policy decisions with which the Committee is wrestling.

Pete Test, Oregon Farm Bureau, said that his organization represents more than 21,000 farm families and that agriculture has always been very active in protecting water quality. He reminded the Committee that farmers were told for 20-30 years to increase fertilizer use to increase yields and now suddenly they are being told to cut back. He said that it is important that government agencies communicate effectively with farmers to educate them about the issues and that it is inappropriate to apply tools that were developed for point sources to nonpoint source problems.

Terry Witt, Oregonians for Food and Shelter, identified ten principles that the Committee should keep in mind when making recommendations to EPA. These included: don't always assume that authority is equivalent to knowledge, don't overlook the significance of feasibility and economic considerations, keep flexibility in the program to address site-specific conditions, and don't confuse good science with political science.

Gayle Killam, Oregon Environmental Council, spoke to the Committee about her organization's efforts to address air and water quality issues in Oregon through a collaborative process. She provided several examples of watershed-based partnerships that she has been involved in and told the Committee that holistic plans are needed that address more than just water quality. She also encouraged the Committee to keep in mind urban and forestry issues in addition to agricultural ones.

Jim Hill, Medford Regional Water Reclamation District, summarized two TMDLs that he has been involved with and emphasized that effective controls need to be based on sound science. He explained that a phosphorus standard that had been specified by the state for one of the TMDLs proved to be incorrect and resulted in a lot of wasted time and effort. He also emphasized the need for TMDLs to address habitat concerns and said that better coordination is needed among state and federal agencies.

Note: The Washington Environmental Council submitted written comments that were distributed to Committee members by mail following the meeting.

Friday, September 5, 1997

Briefing on Forestry Issues:

Dr. George Ice, a research hydrologist from the National Council of the Paper Industry for Air

and Stream Improvement, Inc., provided Committee members a summary of some of the means by which the forest industry addresses nonpoint source issues. Among the points Dr. Ice discussed were the following:

- How is as important as how much. The quality of BMPs that are installed can be as or more important than the quantity. For example, a watershed with a high road density might have less of an impact on water quality than one with fewer roads that are poorly constructed and maintained.
- Regional and site-specific factors greatly influence which forest management practices will effectively avoid or minimize nonpoint source pollution. Dr. Ice illustrated this point by comparing programs in Florida and Washington.
- There are distinct geographic patterns in the types of silvicultural nonpoint source control programs used by states. These patterns largely reflect differences in the resource values per acre, environmental conditions, and ownership/management patterns of the states.
- Adaptive management approaches and monitoring are active in many states to assess whether silvicultural BMPs are meeting water-quality goals. There are examples where regulatory and voluntary approaches have been successful, and there are also examples where regulatory and voluntary approaches have not been successful.
- There are several reasons why it is more difficult to monitor and model nonpoint sources compared to point sources. These include differences in discharge locations, activity sites, background information, background variability, natural disturbances, and nature of effect.
- The TMDL process has demonstrated the potential to drain limited nonpoint source resources away from priority forest water-quality issues to areas where forestry has little or no impact. Limited resources should be focused on priority information needs and efforts to raise BMP implementation.

Small Group Report on the Implications of Being Listed:

The small group that had been formed on Thursday to more fully discuss the implications of being listed reported back to the full Committee on Friday morning. The group had focused its discussions on trying to develop a proposal that would ensure that impaired waterbodies would be stabilized by taking advantage of two forms of incentives: those stemming from the general prohibition on point sources and incentives to stakeholders to control their own destiny. The group also considered whether an early first step be added to TMDL development activities during which a watershed assessment would be conducted. This assessment would identify a number of pieces of information that would be needed to eventually develop the TMDL, such as the beneficial uses and stressors of concern, the applicable water quality standards, previous studies of the watershed, tools available to develop the TMDL, etc. The assessment would also include some statement about the types of control activities (both regulatory and non-regulatory) that might eventually be part of the TMDL. The assessment then could be handed over to a stakeholder team that could begin to develop a strategy to stabilize or improve the waterbody. This might include identifying opportunities for potential enforceable trading and perhaps organizing point source permit renewals so that they would be on the same five-year cycle. The group agreed that it would be important for this watershed assessment to not create an undue burden on state resources, but rather should be viewed as an early first step in TMDL development. Ideally, the process would promote more expeditious development and implementation of TMDLs by ensuring early and meaningful stakeholder participation.

Several comments and concerns were expressed by Committee members following the small group's presentation. These included:

- There are serious concerns associated with pollutant trading because it allows point sources to increase their discharges and it can potentially create "hot spot" problems (i.e., discharges being focused in one particular part of a waterbody). Including a discussion of trading within the context of this proposal might lead to opposition

- from the environmental community.
- The proposed approach is appealing because it promotes creativity. The trading issue can be addressed by recognizing that there are a limited set of appropriate conditions when trading would be allowed to occur.
- One group member pointed out that most of their discussions had focused on the implications of being listed as they affected existing sources. The question of how to address major new sources is a separate issue that will also need to be reviewed.

Following this discussion it was decided that an attempt would be made to write up the "watershed assessment" proposal and that the small group might be convened one additional time to refine the proposal.

Workgroup Reports Introduce Options and Recommendations on New issues (continued):

The breakout groups that had met to more fully discuss the new issues reported back to the Committee on Friday morning. Each group presented a summary of its discussions regarding the different issues and then the full Committee discussed these issues one at a time. The following comments were made during these discussions:

Approach to Allocation

- There was general support for the Criteria for Approval Workgroup's recommendation that EPA develop informational guidance to assist States and others in learning about approaches that have been used successfully in making allocation decisions.
- There are limitations regarding the extent to which EPA can make recommendations regarding a State's approach toward allocation. The burden of making these decisions has to be born by the States and the involved stakeholders, with EPA perhaps becoming more involved in cross-state, Tribal, and international TMDLs.
- Several Committee members provided examples of the complexities associated with making allocation decisions and suggested that it wouldn't be practical for the Committee to fully explore all of the possible specific issues. Other members countered that providing only general recommendations would be of limited use to the States.

Pace of TMDL Development in States without Litigation

- Committee members generally felt comfortable with the 8-13 year time frame that was proposed by the Management and Oversight Workgroup, although some concern was raised regarding how phased TMDLs would be incorporated into this schedule. One group suggested that the time frame should be changed to 8-15 years because of the added need to submit implementation plans.
- A suggestion was made to clarify that development of high priority TMDLs should be initiated earlier (i.e., at least one member felt the 6-8 year time frame suggested by the Workgroup was too long).

Use of Evaluative Assessments vs. Ambient Water Quality Monitoring to Support 303(d)(1) Listing

- The Committee at first spent time trying to define the differences between evaluative assessments and ambient water quality data. A definition of evaluative assessments was suggested (per the section 305(b) guidance) and the merits of using this type of information for listing purposes were discussed.
- A proposal was made that, in instances where there is evidence of an impairment but

there are questions concerning the sufficiency of the data used to determine the impairment, the water could be placed on a "candidate" list. (This might occur for waters listed based on evaluative assessments or for which there are limited data.) If sufficient monitoring data were not collected prior to the next listing cycle, these waters would be defaulted to the official 303(d)(1) list. Several concerns were raised in regard to this proposal, including the impact it might have on state resources (i.e., another list to manage) and the possibility that waters could still end up getting listed based on inadequate data.

- Several Committee members expressed a preference for using some evaluative assessments in listing to the extent they meet appropriate quality assurance and quality control (QA/QC) standards. At least one member, though, questioned exactly what was meant by appropriate QA/QC standards.

Strengthening Tribal Outreach

- Committee members were generally in agreement with the Management and Oversight Workgroup's recommendation regarding strengthening Tribal outreach (i.e., to educate Tribes about the TMDL process and to improve EPA and State's understanding and execution of the government-to-government relationship as it relates to TMDLs).
- It was pointed out that there are still a lot of specific Tribal issues that will need to be addressed once the Committee begins to draft its final report. The Workgroup's recommendation is a good starting point, but the Committee will also need to consider Tribal impacts during the discussion of each separate issue.

Legacy Problems

- There was general approval of the Criteria for Approval Workgroup's recommendation regarding legacy problems, subject to several concerns that were expressed regarding understanding the implications it would have for existing dischargers. Several examples were provided that highlighted the complexities associated with dealing with these types of impairments.
- A suggestion was made to modify the recommendation so that, if no strategy can be found to address the legacy problem, a use attainability analysis (UAA) would be required and the standard would be changed.
- A suggestion was made to divide legacy issues into toxic (e.g., PCB-contaminated sediments) versus structural (old logging roads) problems.

Issues Associated with the Consensus Calendar:

The Committee spent some time at the end of the meeting discussing concerns associated with the Consensus Calendar. Items on the Consensus Calendar were identified by the Workgroups as those that are generally expected to be noncontroversial or that have already been discussed in considerable detail. Several concerns were raised regarding specific wording issues and members were reminded that they would be able to provide editorial and other input on these items during review of the draft Committee report. Among the items that were discussed were:

- Several concerns were expressed regarding the recommendation that States/Tribes/EPA should encourage (and support) local governments, landowners, regulated entities, or community leaders to take the lead in TMDL development. These concerns primarily focused on which steps of the TMDL process it would be appropriate for private parties to engage in (e.g., several members expressed their opinion that private parties should not be responsible for setting load allocations or facilitating public participation).
- A concern was raised regarding an example in the hierarchy approach that incorporated the use of fish tissue assays to set discharge reductions.

- Several issues related to the use of numeric and narrative criteria were discussed as they applied to the hierarchy approach. Some members felt that the approach should specify that the use of existing numeric criteria should be assumed to be adequate for TMDL development purposes, while other members felt this would not always be the case.

Next Steps Preparation of Draft Committee Report and Future Meetings:

The Committee next focused on the steps that would need to be taken to resolve outstanding issues and to begin drafting the final report. Members identified several issues that needed to be further discussed and then established subgroups to address these issues. It was agreed that only one or two additional conference calls would be used to discuss each issue. (Existing workgroups were tasked with addressing certain issues, while new subgroups were created to address other issues.) Members were also identified to draft written proposals regarding each remaining issue.

The outstanding issues to be addressed by these new groups are:

- List Presentation
- Priority Ranking
- Allocation
- Federal Coordination
- Stakeholder-led TMDLs
- Drinking Water Criteria
- Wet Weather Criteria
- Implications of Being Listed
- Threatened Waters
- Candidate List (for waters listed based on evaluated data) .
- Instream Flows Listing and TMDL Development
- Air Deposition Listing and TMDL Development
- Hierarchy Approach:
 - Phased TMDLs
 - Margin of Safety
 - Best Professional Judgement
 - Surrogate Measures

The Committee also spent some time discussing an outline and a schedule for the preparation of its report. It was agreed that a preliminary draft of the report, with placeholders for several remaining issues, would be prepared prior to the Salt Lake City meeting in January. Committee members and EPA representatives also discussed the need for an additional meeting to take place following the Salt Lake City meeting. It was generally agreed that an additional meeting would be necessary, and a sixth and final meeting was therefore tentatively scheduled for April (at a location to be determined) in order to meet EPA's expressed need for a final report no later than May 1998.

Adjournment:

Ms. Prothro then adjourned the meeting with a second from the Committee..

Approval of Meeting Summary:

This summary of the fourth meeting of the Federal Advisory Committee on Total Maximum Daily Loads was reviewed and approved by the full Committee at the May 4-6 meeting in Atlanta, Georgia.

Hazel Groman
Designated Federal Official
Date May 29, 1998
